

# TEXAS ETHICS COMMISSION

IN THE MATTER OF

**R. TED HOWARD,  
CAMPAIGN TREASURER,  
MIDLOTHIAN TOGETHER**

**RESPONDENT**

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BEFORE THE

**TEXAS ETHICS COMMISSION**

**SC-31005154 AND SC-31006170**

## **ORDER and AGREED RESOLUTION**

### **I. Recitals**

The Texas Ethics Commission (the commission) met on February 23, 2011, to consider sworn complaints SC-31005154 and SC-31006170. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 252.001, 253.031, 253.032(d), 253.037, and 254.031 of the Election Code, laws administered and enforced by the commission. To resolve and settle these complaints as to the respondent without further proceedings, the commission proposed this resolution to the respondent.

### **II. Allegations**

Sworn complaint SC-31005154 alleged that the respondent knowingly accepted political contributions totaling more than \$500 and made or authorized political expenditures totaling more than \$500 for a political committee at a time when a campaign treasurer appointment for the committee was not in effect, and that the respondent knowingly made or authorized political expenditures totaling more than \$500 earlier than the 60th day after the date the political committee filed its campaign treasurer appointment.

Sworn complaint SC-31006170 alleged that the respondent, as campaign treasurer for Midlothian Together: 1) failed to include required information for political contributions from an out-of-state political committee in campaign finance reports, 2) failed to properly report political contributions and political expenditures in campaign finance reports, and 3) failed to file pre-election campaign finance reports for the May 8, 2010, election. Specifically, the complaint alleged that the respondent failed to disclose required out-of-state political committee information for political contributions accepted from Ash Grove Cement Political Action Committee and failed to disclose political contribution and political expenditure totals in the committee's dissolution report filed in October 2009.

### III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of fact:

1. The respondent is the campaign treasurer and a contribution and expenditure decision maker for Midlothian Together, a general-purpose political committee that previously filed campaign finance reports as a specific-purpose political committee.

#### SC-31005154 – Allegations that the Respondent Accepted Political Contributions and Made or Authorized Political Expenditures for Midlothian Together Without a Campaign Treasurer Appointment in Effect and Allegations Relating to Section 253.037, Election Code

2. On April 6, 2009, Midlothian Together filed with the Midlothian City Secretary an appointment of a campaign treasurer for a specific-purpose political committee that disclosed that the committee supported two candidates for city council. Midlothian Together filed with the Midlothian City Secretary as a specific-purpose political committee until it filed a dissolution report on October 9, 2009. The respondent was the campaign treasurer for Midlothian Together during the period the committee filed as a specific-purpose political committee.
3. On October 5, 2009, Midlothian Together filed with the Midlothian City Secretary a campaign treasurer appointment for a general-purpose political committee that named the respondent the campaign treasurer for the committee and that listed the respondent as a contribution and expenditure decision maker for the committee.
4. Midlothian Together's 30-day pre-election report for the November 3, 2009, election, filed October 5, 2009, with the Midlothian City Secretary on Form GPAC (the campaign finance report form for general-purpose political committees), disclosed \$195.28 in total political contributions and \$8.99 in total political expenditures of \$50 or less (unless itemized). Although the report left blank the portion of the report's cover page used for disclosing total political expenditures, Schedule F (used for reporting political expenditures) disclosed a single political expenditure of \$8.99. The report disclosed activity from October 5, 2010.
5. Midlothian Together's 8-day pre-election report for the November 3, 2009, election, filed October 26, 2009, with the Midlothian City Secretary on Form GPAC, disclosed \$1,400 in total political contributions and \$1,534.99 in total political expenditures. The report disclosed a reporting period from October 6, 2009, through October 26, 2009. The report disclosed October 16, 2009, as the earliest date the committee accepted political contributions or made political expenditures during the reporting period.
6. Midlothian Together's semiannual report, filed January 15, 2010, with the Midlothian City Secretary on Form GPAC, disclosed \$245 in total political contributions and \$0 in total political expenditures.

7. On May 28, 2010, after receiving notice of sworn complaint SC-31005154, the respondent stated that the committee changed from a specific-purpose political committee to a general-purpose political committee in 2009. The respondent also stated that he was enclosing two reports that were filed with the local city secretary by mistake. The respondent submitted a report using Form GPAC that covered the period from January 16, 2010, through April 7, 2010, but that did not disclose a report type, as well as an 8-day pre-election report for the May 8, 2010, election using Form GPAC. Although the reports were notarized on May 17, 2010, the reports were not date stamped by the local filing authority and the local filing authority does not maintain a copy of the reports. The first report disclosed \$0 in total political contributions and \$0 in total political expenditures. The second report disclosed \$1,200 in total political contributions and \$599 in total political expenditures.
8. Also in response to the sworn complaint allegations, the respondent stated that Midlothian Together was established as a specific-purpose political committee to support two candidates in the May 2009 municipal election, but that, in October 2009, the committee was converted to a general-purpose political committee. The respondent stated that, "We were under the assumption the appointment of the treasurer in the SPAC carried over to the GPAC and waiting periods were not required."
9. On August 4, 2010, Midlothian Together filed with the commission a semiannual report on Form GPAC that covered a reporting period from May 2, 2010, through June 15, 2010. The report disclosed \$300 in total political contributions of \$50 or less (unless itemized) and \$2,157.13 in total political expenditures. The report left blank the portion of the report's cover page used for disclosing total political contributions and did not include Schedule A (used for reporting political contributions).
10. On August 31, 2010, Midlothian Together filed with the commission a campaign treasurer appointment for a general-purpose political committee that named the respondent the campaign treasurer for the committee and that listed the respondent as a contribution and expenditure decision maker for the committee. Midlothian Together also filed with the commission a copy of the campaign treasurer appointment for a general-purpose political committee originally filed on October 5, 2009, with the Midlothian City Secretary.
11. On January 11, 2011, Midlothian Together filed a semiannual report with the commission on Form GPAC that disclosed \$0 in total political contributions and \$0 in total political expenditures.
12. Between October 9, 2009, the date Midlothian Together filed a dissolution report for a specific-purpose political committee, and August 31, 2010, the date Midlothian Together filed a campaign treasurer appointment with the commission, Midlothian Together accepted political contributions totaling approximately \$3,250 and made political expenditures totaling approximately \$4,290.

SC-31006170 – Allegations that the Respondent Did Not Properly Disclose Information Required in Campaign Finance Reports and Did Not File Required Pre-Election Campaign Finance Reports for Midlothian Together

13. In support of the allegations in sworn complaint SC-31006170 that the respondent was required to file for Midlothian Together pre-election campaign finance reports for the May 8, 2010, election, the complaint included copies of two political advertising communications that supported candidates for city council in the May 8, 2010, election. The communications disclosed that Midlothian Together paid for the political advertising.
14. Midlothian Together's 8-day pre-election report for the May 9, 2009, election, filed April 30, 2009, with the Midlothian City Secretary on Form SPAC (the campaign finance report form for specific-purpose political committees), disclosed a \$2,000 political contribution from "ASH GROVE CEMENT PAC," but did not include a written statement, certified by an officer of the political committee, listing the full name and address of each person who contributed more than \$100 to the political committee during the 12 months immediately preceding the contribution, or a copy of the political committee's statement of organization filed with the Federal Election Commission (FEC) and certified by an officer of the committee.
15. Midlothian Together's dissolution report, filed October 9, 2009, with the Midlothian City Secretary on Form SPAC, disclosed 33 cents in total political contributions of \$50 or less (unless itemized). The report left blank the portions of the cover page used for disclosing total political contributions, total political expenditures of \$50 or less (unless itemized), total political expenditures, total political contributions maintained, and total outstanding loans. Schedule A did not disclose any political contributions. Schedule F disclosed eight political expenditures totaling approximately \$3,590.
16. Midlothian Together's 8-day pre-election report for the November 3, 2009, election, filed October 26, 2009, with the Midlothian City Secretary on Form GPAC, disclosed a \$500 political contribution from "Ashgrove PAC," but did not include a copy of the political committee's statement of organization filed with the FEC and certified by an officer of the committee, or a document listing the committee's name, address, and phone number, the name of the person appointing the committee's campaign treasurer, and the name, address, and telephone number of the committee's campaign treasurer.
17. As previously noted, on May 28, 2010, the respondent submitted to the commission a report using Form GPAC that covered the period from January 16, 2010, through April 7, 2010, but that did not disclose a report type. The report disclosed that it was filed for the May 8, 2010, election. Although the report disclosed that the committee supported two candidates for city council and assisted an officeholder, the report disclosed \$0 in total political contributions and \$0 in total political expenditures. Although the letter accompanying the report stated

- that the report was filed with the local city secretary by mistake, the city secretary does not maintain a copy of the report at issue. The report was notarized on May 17, 2010.
18. Also, as previously noted, on May 28, 2010, the respondent submitted to the commission an 8-day pre-election report for the May 8, 2010, election using Form GPAC. The report disclosed that the committee supported two candidates for city council and assisted an officeholder. The report disclosed \$1,200 in total political contributions and \$599 in total political expenditures. Although the letter accompanying the report stated that the report was filed with the local city secretary by mistake, the city secretary does not maintain a copy of the report at issue. The report was notarized on May 17, 2010.
  19. In response to the sworn complaint allegations, on June 17, 2010, the respondent submitted an affidavit in which he swore that, for the committee's 8-day pre-election report for the May 9, 2009, election, as well as the committee's 8-day pre-election report for the November 3, 2009, election, the out-of-state political committee identification number was not entered and supporting documentation was not provided for political contributions from Ash Grove Cement Political Action Committee. The respondent swore that he requested a certified statement of organization from the contributor at issue and that he will submit the statement of organization to the commission upon receipt. As of February 23, 2011, the respondent had not submitted the statement of organization. The respondent included with the affidavit copies of Schedule A from the original reports at issue that included the FEC identification number C00102517 for the political contributions from Ash Grove Cement Political Action Committee.<sup>1</sup>
  20. The respondent also swore that he corrected the "totals" on the cover page of the committee's dissolution report originally filed with the Midlothian City Secretary on October 9, 2009, using Form SPAC. The respondent attached to the affidavit a copy of "Cover Sheet Page 2" (used, in pertinent part, for disclosing political contribution, political expenditure, and outstanding loan totals), which disclosed \$3,593.75 in total political expenditures and \$205.28 in total political contributions maintained.<sup>2</sup> The respondent again left blank the portion of the report's cover page used for disclosing total political contributions, total political expenditures of \$50 or less (unless itemized), and total outstanding loans. The copy of "Cover Sheet Page 2" included the original affidavit that was completed on October 5, 2009.
  21. With regard to the 30-day and 8-day pre-election reports for the May 8, 2010, election, the respondent swore that, "Both reports were filed with the City Secretary by mistake." The respondent submitted a report marked as a 30-day pre-election report for the May 8, 2010, election, that was notarized on June 17, 2010. The report disclosed the same political contribution and political expenditure total amounts as the report previously submitted on

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<sup>1</sup> The respondent did not use the correction affidavit form prescribed by the commission.

<sup>2</sup> The respondent did not use the correction affidavit form prescribed by the commission.

May 28, 2010, and notarized on May 17, 2010. The respondent also submitted a report marked as an 8-day pre-election report for the May 8, 2010, election, that was notarized on June 17, 2010. The report added \$100 in total political contributions of \$50 or less (unless itemized), and changed the amount of total political contributions from \$1,200 to \$1,300.

22. The respondent swore that contributions and expenses for the political advertising communications included with the complaint were explained in the pre-election reports for the May 8, 2010, election.
23. Ash Grove Cement Political Action Committee is a political committee that files campaign finance reports with the FEC and that does not have a campaign treasurer appointment on file with the commission.

#### **IV. Findings and Conclusions of Law**

The facts described in Section III support the following findings and conclusions of law:

SC-31005154 – Allegations that the Respondent Accepted Political Contributions and Made or Authorized Political Expenditures for Midlothian Together Without a Campaign Treasurer Appointment in Effect and Allegations Relating to Section 253.037, Election Code

1. Each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252, Election Code. ELEC. CODE § 252.001.
2. A specific-purpose committee for supporting or opposing a candidate or assisting an officeholder must file its campaign treasurer appointment with the same authority as the appointment for candidacy for the office. *Id.* § 252.006. An individual must file a campaign treasurer appointment for the individual's own candidacy with the clerk or secretary of the governing body of the political subdivision or, if the political subdivision has no clerk or secretary, with the governing body's presiding officer, if the appointment is made for candidacy for an office of a political subdivision other than a county. *Id.* § 252.005(3).
3. A general-purpose committee must file its campaign treasurer appointment with the commission. *Id.* § 252.009
4. A campaign treasurer appointment takes effect at the time it is filed with the authority specified by chapter 252, Election Code, and continues in effect until terminated. *Id.* § 252.011.
5. The filing of a dissolution report terminates a specific-purpose committee's campaign treasurer appointment. Ethics Commission Rule § 20.341(c)(2).
6. A political committee may not knowingly accept political contributions totaling more than \$500 or make or authorize political expenditures totaling more than \$500 at a time when a

campaign treasurer appointment for the committee is not in effect. ELEC. CODE § 253.031(b).

7. A general-purpose committee may not knowingly make or authorize a political contribution or political expenditure unless the committee has filed its campaign treasurer appointment not later than the 60th day before the date the contribution or expenditure is made. *Id.* § 253.037(a)(1).
8. A specific-purpose committee that changes its operation and becomes a general-purpose committee is subject to the requirements applicable to a general-purpose committee as of the date it files its campaign treasurer appointment as a general-purpose committee with the commission. Ethics Commission Rules § 20.313.
9. Midlothian Together filed a dissolution report using Form SPAC on October 9, 2009, with the local filing authority. The dissolution report terminated the committee's campaign treasurer appointment. In response to the sworn complaint allegations, the respondent stated that Midlothian Together converted to a general-purpose political committee in October 2009. Although the committee filed a campaign treasurer appointment for a general-purpose political committee with the local filing authority on October 5, 2009, a campaign treasurer appointment for a general-purpose political committee does not take effect until the date it is filed with the commission. Thus, Midlothian Together did not have a campaign treasurer appointment in effect from October 9, 2009, the date the committee filed a dissolution report with the local filing authority, until August 31, 2010, the date the committee filed a campaign treasurer appointment with the commission. Midlothian Together accepted political contributions totaling approximately \$3,250 and made political expenditures totaling approximately \$4,290 during the period of time it did not have a campaign treasurer appointment in effect. The respondent was a contribution and expenditure decision maker for Midlothian Together during the period at issue. Therefore, there is credible evidence of violations of sections 252.001, 253.031, and 253.037 of the Election Code.

SC-31006170 – Allegations that the Respondent Did Not Properly Disclose Information Required in Campaign Finance Reports and Did Not File Required Pre-Election Campaign Finance Reports for Midlothian Together

10. Each report must include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2).

11. Each report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. *Id.* § 254.031(a)(5).
12. Each report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. *Id.* § 254.031(a)(6).
13. Each report must include, as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. *Id.* § 254.031(a)(8).
14. In a reporting period, a candidate, officeholder, or political committee may not knowingly accept political contributions totaling more than \$500 from an out-of-state political committee unless, before accepting a contribution that would cause the total to exceed \$500, the candidate, officeholder, or political committee, as applicable, receives from the out-of-state committee a written statement, certified by an officer of the out-of-state committee, listing the full name and address of each person who contributed more than \$100 to the out-of-state committee during the 12 months immediately preceding the date of the contribution, or a copy of the out-of-state committee's statement of organization filed as required by law with the FEC and certified by an officer of the out-of-state committee. *Id.* § 253.032(a). A candidate, officeholder, or political committee shall include the statement or copy required by subsection (a) as a part of the report filed under chapter 254, Election Code, that covers the reporting period to which subsection (a) applies. *Id.* § 253.032(d).
15. A candidate, officeholder, or political committee that accepts political contributions totaling \$500 or less from an out-of-state political committee shall include as part of the report filed under chapter 254, Election Code, that covers the reporting period in which the contribution is accepted the same information for the out-of-state political committee required for general-purpose committees by sections 252.002 and 252.003, Election Code, or a copy of the out-of-state committee's statement of organization filed as required by law with the FEC and certified by an officer of the out-of-state committee. *Id.* § 253.032(e).
16. In addition to other required reports, for each election in which a specific-purpose committee supports or opposes a candidate or measure, the committee's campaign treasurer shall file two reports. *Id.* § 254.124(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day and covers the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable, and continuing through the 40th day before election day. *Id.* § 254.124(b). The second report must be received by the authority with whom the report is required to be filed not later than



- the eighth day before election day and covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.124(c).
17. In addition to other required reports, for each election in which a general-purpose committee is involved, the committee's campaign treasurer shall file two reports. *Id.* § 254.154(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day and covers the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable, and continuing through the 40th day before election day. *Id.* § 254.154(b). The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day and covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.154(c).
  18. The respondent failed to disclose the information required by section 253.032(d) of the Election Code for a \$2,000 political contribution from Ash Grove Cement Political Action Committee, an out-of-state political committee that files campaign finance reports with the FEC. The respondent disclosed the political contribution in Midlothian Together's 8-day pre-election report for the May 8, 2009, election and was the committee's campaign treasurer at the time the report was required. Therefore, there is credible evidence of a violation of section 253.032(d) of the Election Code as to disclosure of the political contribution at issue.
  19. The respondent, as campaign treasurer of Midlothian Together, failed to disclose the total amount of political contributions, the total amount of political expenditures, the total amount of political contributions maintained, and the total amount of outstanding loans on Midlothian Together's dissolution report filed October 9, 2009. Therefore, there is credible evidence of violations of sections 254.031(a)(2), 254.031(a)(6), and 254.031(a)(8) of the Election Code. Although the respondent left blank the portion of the report's cover page used for disclosing total political expenditures of \$50 or less (unless itemized), the respondent disclosed approximately \$3,590 in political expenditures on Schedule F of the report, and the evidence does not show that the respondent failed to include a specific listing of any political expenditures of \$50 or less made during the reporting period. Therefore, there is insufficient evidence of a violation of section 254.031(a)(5) of the Election Code.
  20. Midlothian Together's 8-day pre-election report for the November 3, 2009, election disclosed a \$500 political contribution from Ash Grove Cement Political Action Committee. Although the report failed to disclose the information described by section 253.032(e) of the Election Code, Midlothian Together did not have a campaign treasurer appointment in effect during the period at issue. The campaign treasurer of a general-purpose political committee is the person legally responsible for filing the committee's pre-election campaign finance reports. Therefore, there is credible evidence that the respondent did not violate section 253.032(e) of the Election Code as to disclosure of the political contribution at issue.

21. Midlothian Together did not have a campaign treasurer appointment in effect at the time the 30-day and 8-day pre-election reports for the May 8, 2010, election were due. Therefore, there is credible evidence that the respondent did not violate sections 254.124(b) and 254.124(c), or sections 254.154(b) and 254.154(c), of the Election Code.

### **V. Representations and Agreement by Respondent**

By signing this order and agreed resolution and returning it to the commission:

1. The respondent neither admits nor denies the facts described under Section III or the commission's findings and conclusions of law described under Section IV, and consents to the entry of this order and agreed resolution solely for the purpose of resolving these sworn complaints.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in these matters.
3. The respondent acknowledges that each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252, Election Code. The respondent acknowledges that a political committee may not knowingly accept political contributions totaling more than \$500 or make or authorize political expenditures totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect. The respondent acknowledges that a political committee shall include the statement or copy required by section 253.032(a), Election Code, as a part of the report filed under chapter 254, Election Code, that covers the reporting period to which that section applies. The respondent acknowledges that a general-purpose political committee may not knowingly make or authorize a political contribution or political expenditure unless the committee has filed its campaign treasurer appointment not later than the 60th day before the date the contribution or expenditure is made. The respondent acknowledges that each report must include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. The respondent acknowledges that each report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. The respondent acknowledges that each report must include, as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. The respondent agrees to comply with these requirements of the law.

**VI. Confidentiality**

This order and agreed resolution describes violations that the commission has determined are neither technical nor *de minimis*. Accordingly, this order and agreed resolution is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the commission.

**VII. Sanction**

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$500 civil penalty.

**VIII. Order**

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-31005154 and SC-31006170 as to the respondent.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
R. Ted Howard, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director